IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6493 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHAGWAN MAVJI PATEL

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 6493 of 2001

MR BK DAVE for Petitioner No. 1

MRS HANSA PUNANI AGP for Respondents No. 1-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 20/12/2001

ORAL JUDGEMENT

By means of filing this petition, the petitioner has challenged the order of detention dated 12/6/2001 passed by the Commissioner of Police, Ahmedabad City.

2. It is a settled principle of law that in order to bring a person within the expression "dangerous person" as defined in clause (c) of section 2 of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short `the Act of 1985'), there should be positive materials to indicate that such person is habitual of committing or attempting to commit or abetting the commission of offences which are punishable under Chapter XVI or XVII of Chapter V of the Arms Act and that single or isolated act falling under the said Chapters cannot be characterised as a habitual acts as envisaged in section 2(c) of the PASA Act. Further, besides a person being a dangerous person, his activities should also fall within the ambit of expression `public order'. A distinction has to be drawn between the `law and order' and `maintenance of public order'. A reference may be made of M.J.Shaikh V. M.M. Mehta, Commissioner of Police & Ors., reported in 1995 (2) GLR 1268.

3. I have heard learned advocate for the petitioner and also perused the material on record. According to learned advocate for the petitioner, the detaining authority has passed the detention order relying upon the two criminal cases registered against the detenu under the Indian Penal Code. The first offence is registered before the Ellisbridge Police Station vide CR No.101 of 2001 for the offence punishable under Sec.379 and 447 of Indian Penal Code, on 14/2/2001 and the second offence is registered on before the Navrangpura Police Station vide CR No.287 of 2001 for the offence punishable under Sections 454, 380 and 114 of Indian Penal Code, on 2/6/2001. The learned advocate for the petitioner has submitted that both the aforesaid cases are pending for investigation and there is no live link between the two offence and the petitioner is not an habitual offender, and for teh aforesaid two offences, the petitioner cannot be detained under the Act. Further the learned advocate for the petitioner has submitted that the detaining authority has recorded statement of two witnesses and claimed privilege under Sec.9(2) of the Act illegally and mechanically, and thereby the detaining authority has prevented the detenu from making an effective representation. In support of his contention, the learned advocate for teh detenu has relied upon 22 GLR 1186. The learned advocate for the petitioner has submitted that He has further submitted that looking to the material supplied to the petitioner it cannot be said that the petitioner is any how acting in any manner prejudically to the maintenance of public order, at the most it is question of maintenance of law and order. The

learned advocate for the petitioner has further submitted that no affidavit has been filed resisting the contentions raised in this petition, either by the detaining authority or by the State. It has been held in a judgment delivered by this Court in the case of Ashokbhai Jivraj @ Jivabhai Solanki Vs. Police Commissioner, Surat and Ors. reported in 2000(1) G.L.H. 393 as under:

> "Before parting with the matter, we may observe that recently, we have come across few cases wherein no counter-affidavits are filed by the respondents. It is settled law that whenever an order of detention is challenged by a detenu or by his "next friend", it is the duty of the authorities to justify the action by filing counter-affidavit preferably by the detaining authority himself, unless there are circumstances which may justify filing of affidavit by an officer or authority other than the detaining authority".

3. Since no affidavit has been filed either by the detaining authority or by the State authority resisting the present petition, the order of detention is illegal and the same cannot be sustained. Learned advocate for the petitioner does not press any other points.

4. The petition is allowed. The impugned order of detention dated 12/6/2001 passed against the detenu is hereby quashed and set aside. The detenu namely Bhagwan Mavji Patel is hereby ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs.

(R.P.DHOLAKIA,J.)

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